

REMARKS

New claims 15-16 have been added. Claims 1 and 8 have been amended. Claims 6-7 and 13-14 have been canceled. No new matter has been added. Thus, claims 1-5, 8-12, and 15-16 are pending in the present application.

In the Office Action, claims 1-4 and 6-7 were rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Tiedemann, et al (WO 98/35514). Claim 5 was rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Tiedemann in view of Gilhousen (U.S. Patent No. 5,751,761). Claims 8-11 and 13-14 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Tiedemann in view of Schilling (U.S. Patent No. 5,410,568). Claim 12 was rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Tiedemann in view of Schilling and further in view of Gilhousen. Claims 6-7 and 13-14 have been canceled, rendering the Examiner's rejections of these claims moot. The Examiner's remaining rejections are respectfully traversed.

With regard to independent claims 1 and 8, Applicant describes and claims, among other things, a method for partitioning code space in a communication system that includes dividing a code space into at least two subspaces. The codes in the first subspace are assigned to at least one user at a time for a voice communication session and the codes in the second subspace are assigned for data communication. With particular regard to independent claim 1, the codes in the second subspace are assigned to one user for data communication. With particular regard to independent claim 8, the codes in the second subspace are assigned to one of a plurality of users on a timeshare basis for data communication. By partitioning the code space in the claimed manner, the efficiency of systems supporting both voice and data users may be increased.

In contrast, Tiedemann is directed to improving the efficient use of a forward link by transmitting data traffic during periods of low voice activity. Tiedemann teaches that data transmission over primary and secondary code channels should be dynamically adjusted to match the available forward link capacity to avoid degradation in the quality of voice communication. See Tiedemann, page 5, ll. 16-21. The primary code channel can be used to transmit unscheduled transmissions of small amounts of data. The secondary code channels may be used for scheduled transmission of data traffic at high rates. See Tiedemann, page 7, ll. 6-23.

The Examiner then alleges at lines 1-5 on page 4 of the Office Action that Tiedemann teaches that the data type of the first subspaces (or secondary channels) can be of various types, which may include voice activity. Applicant respectfully disagrees and submits that Tiedemann states that "the secondary code channels can be of various types, and each type can have the same or different transmission capacity as the primary code channel." Tiedemann, however, makes no reference to the secondary channels having different data types. Thus, Applicant respectfully submits that the Examiner's statement that the data type of the first subspace includes voice activity has no record support and is based on an erroneous reading of Tiedemann.

For at least the aforementioned reasons, Applicant respectfully submits that Tiedemann does not teach or suggest dividing a code space into at least two subspaces, wherein the codes in the first subspace are assigned to at least one user at a time for a voice communication session and the codes in the second subspace are assigned for data communication. Thus, Applicant respectfully submits that claims 1-4 are not anticipated by Tiedemann and requests that the Examiner's rejections of these claims be withdrawn.

Applicant also submits that the Examiner has failed to present a *prima facie* case that the pending claims are obvious in view of the cited references. To establish a *prima facie* case of

obviousness, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (CCPA 1974). As discussed above, Tiedemann does not teach or suggest dividing a code space into at least two subspaces, wherein the codes in the first subspace are assigned to at least one user at a time for a voice communication session and the codes in the second subspace are assigned for data communication. The Examiner relies on Gilhousen and Schilling for various teachings not present in Tiedemann. However, the secondary references do not remedy the fundamental deficiency of the primary reference.

Moreover, as discussed above, Tiedemann teaches that both the primary and secondary code channels are used to transmit data to improve the efficiency of a forward link by transmitting data traffic during periods of low voice activity. Thus, Applicants submit that Tiedemann teaches away from the present invention. In particular, Tiedemann appears to teach away from dividing a code space into at least two subspaces, wherein the codes in the first subspace are assigned to at least one user at a time for a voice communication session and the codes in the second subspace are assigned for data communication. It is by now well established that teaching away by the prior art constitutes *prima facie* evidence that the claimed invention is not obvious. See, *inter alia*, *In re Fine*, 5 U.S.P.Q.2d (BNA) 1596, 1599 (Fed. Cir. 1988); *In re Nielson*, 2 U.S.P.Q.2d (BNA) 1525, 1528 (Fed. Cir. 1987); *In re Hedges*, 228 U.S.P.Q. (BNA) 685, 687 (Fed. Cir. 1986).

For at least the aforementioned reasons, Applicant respectfully submits that claims 1-5 and 8-12 are not obvious over the cited references, either alone or in combination, and request that the Examiner's rejections of claims 5 and 8-12 under 35 U.S.C. § 103(a) be withdrawn.

Claims 15-16 depend from claims 1 and 8, respectively. Thus, for at least the aforementioned reasons, Applicant respectfully submits that claims 15-16 are allowable over the prior art.

For the aforementioned reasons, it is respectfully submitted that all claims pending in the present application are in condition for allowance. The Examiner is invited to contact the undersigned at (713) 934-4052 with any questions, comments or suggestions relating to the referenced patent application.

Respectfully submitted,

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